

COPYRIGHT IN HIGHER EDUCATION

Clarke Iakovakis, Scholarly Services Librarian,
Edmon Low Library
Oklahoma State University



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Library

OUTLINE

- What is Copyright?
- Using Copyrighted Works
- Author Rights



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SECTION 1:

WHAT IS COPYRIGHT?



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INTELLECTUAL PROPERTY

- Copyright
- Patents
- Trade secrets
- Trademarks



Library

WHAT IS THE PURPOSE OF COPYRIGHT?

Congress shall have the power

“To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”

- US Constitution, Article I, Section 8, Clause 8



Library

WHAT IS THE PURPOSE OF COPYRIGHT?

To promote the **Progress of Science and useful Arts**



Incentivize creativity

by **securing** to Authors and Inventors the **exclusive Right** to their respective Writings and Discoveries



Granting monopoly rights

for **limited** Times



**Eventually allow people to
use the work to create
more works**



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WHAT IS COPYRIGHT?

A bundle of rights to:

- Make copies
- Publicly distribute copies
- Make derivative works
- Publicly perform or display the work
- License any of the above to third parties



WHO HERE OWNS A COPYRIGHT?

Everyone!



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WHAT IS PROTECTED BY COPYRIGHT?

Original work of authorship

With a modicum of creativity

Fixed in a tangible medium of expression



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HOW DO WE GET COPYRIGHT?

Copyright exists from the moment of creation

No need to use ©, no “magic words,”
No need to register or formally publish

Copyright just happens

Therefore you must assume a work is copyrighted unless otherwise indicated



WHAT IS NOT PROTECTABLE?

- Functional/Utilitarian
- Facts
- Ideas
- Titles & slogans
- Data
- Methods (patent)
- Scientific discoveries
- Works created by federal agencies
- Work where copyright is not claimed
- Work no longer protected due to time limitations



FREE AS AIR – THE PUBLIC DOMAIN

- Ideas, facts
- Works of the federal gov't
- Titles, short phrases
- Works published before 1923
- Works published without notice prior to 1989
- Works not renewed prior to 1963



SECTION 2: USING COPYRIGHTED WORKS



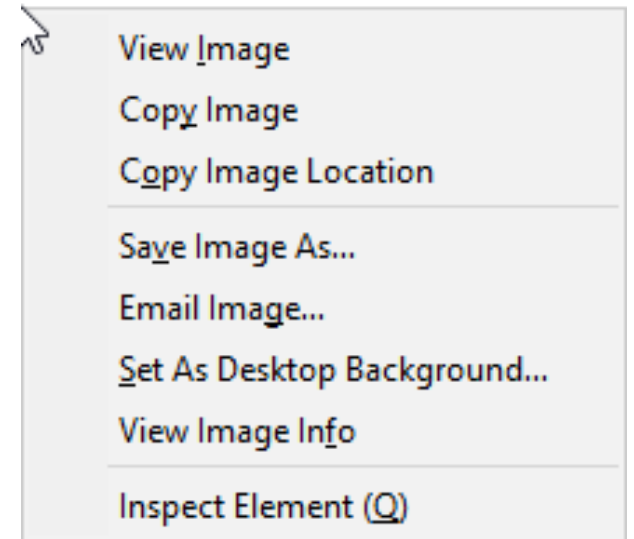
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HOW IS IT POSSIBLE TO USE COPYRIGHTED WORKS?

(LEGALLY)

Use can mean many different things:

- Make photocopies
- Publicly distribute copies
- Make derivative works
- Publicly perform or display the work



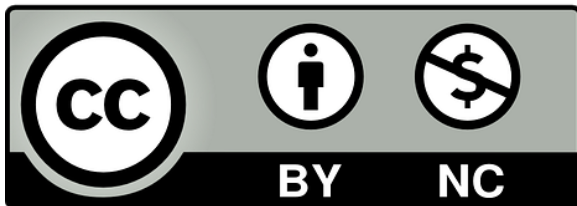
HOW IS IT POSSIBLE TO USE COPYRIGHTED WORKS?

- Permissions
- Statutory exemptions
- Fair use

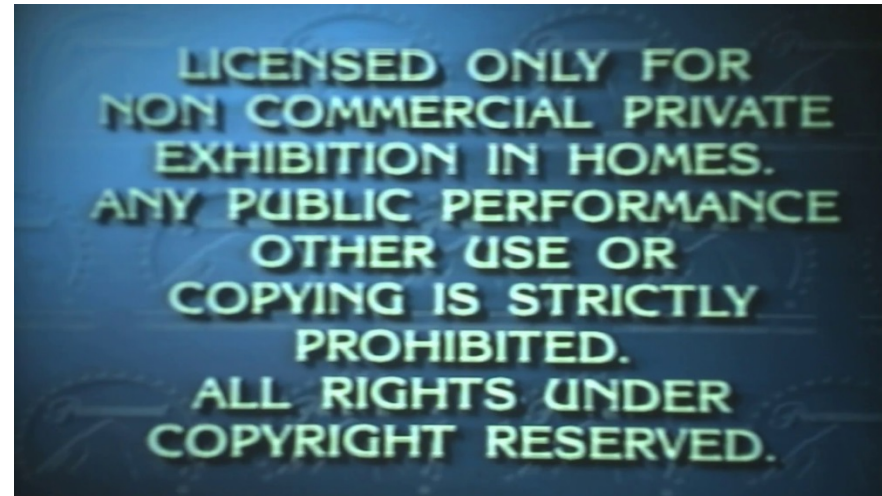


PERMISSIONS

- Terms of use
- Creative commons license
- etc.



Example CC licenses



Example copyright notice for studio film

(EDUCATION & LIBRARY-RELATED)

STATUTORY EXEMPTIONS

- First Sale Doctrine
- Section 108
- Public Performance and Display for Educational Purposes (Section 110)
- Technology, Education, and Copyright Harmonization Act of 2002 (TEACH Act)



TEACH ACT

- ☐ My institution is a nonprofit accredited educational institution or a government agency
- ☐ It has a policy on the use of copyrighted materials
- ☐ It provides accurate information to faculty, students and staff about copyright
- ☐ Its systems will not interfere with technological controls within the materials I want to use
- ☐ The materials I want to use are specifically for students in my class
- ☐ Only those students will have access to the materials
- ☐ The materials will be provided at my direction during the relevant lesson
- ☐ The materials are directly related and of material assistance to my teaching content
- ☐ My class is part of the regular offerings of my institution
- ☐ I will include a notice that the materials are protected by copyright
- ☐ I will use technology that reasonably limits the students' ability to retain or further distribute the materials
- ☐ I will make the materials available to the students only for a period of time that is relevant to the context of the class session
- ☐ I will store the materials on a secure server and transmit them only as permitted by this law
- ☐ I will not make copies other than the one I need to make the transmission



TEACH ACT

Requirements (cont)

___ The materials are of the proper type and amount the law authorizes

- Entire performances of nondramatic literary and musical works
- Reasonable and limited parts of a dramatic literary, musical, or audiovisual work
- Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching

___ The materials are not among those the law specifically excludes from its coverage:

- Materials specifically marketed for classroom use for digital distance education
- Copies I know or should know are illegal
- Textbooks, coursepacks, electronic reserves and similar materials typically purchased individually by the students for independent review outside the classroom or class session

___ If I am using an analog original, I checked before digitizing it to be sure:

- I copied only the amount that I am authorized to transmit
- There is no digital copy of the work available except with technological protections that prevent my using it for the class in the way the statute authorizes



FAIR USE



["Fair use is flexible to help fairly balance copyright and free speech"](#) by University of Minnesota Libraries is licensed under CC BY NC



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FAIR USE ASKS:

“Would allowing the use go further towards promoting the goals of copyright law than would disallowing the use?”

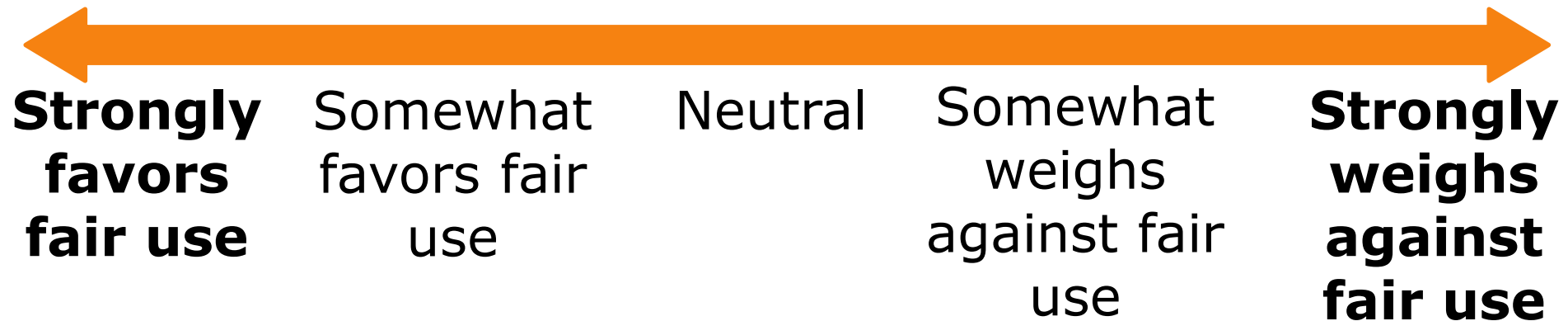
“To promote the Progress of Science and useful Arts”



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FOUR FACTORS OF FAIR USE

- Purpose and character of the use
- Nature of the copyrighted work
- Amount and substantiality of the portion used
- Effect on the potential market for the work



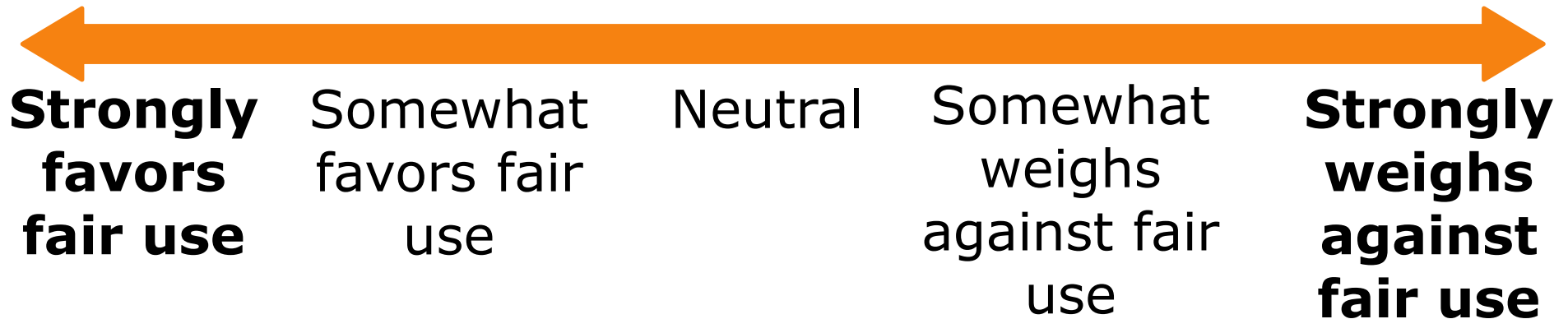
FACTOR 1: PURPOSE OF THE USE

Favors fair use

- ☐ Education, scholarship, research, news reporting
- ☐ Non-profit use
- ☐ Transformative use (creates a new work with a new purpose), including parody and transformative technologies

Weights against fair use

- ☐ Commercial activity
- ☐ Profiting from use
- ☐ Decorative or other non-critical, non-commentary use



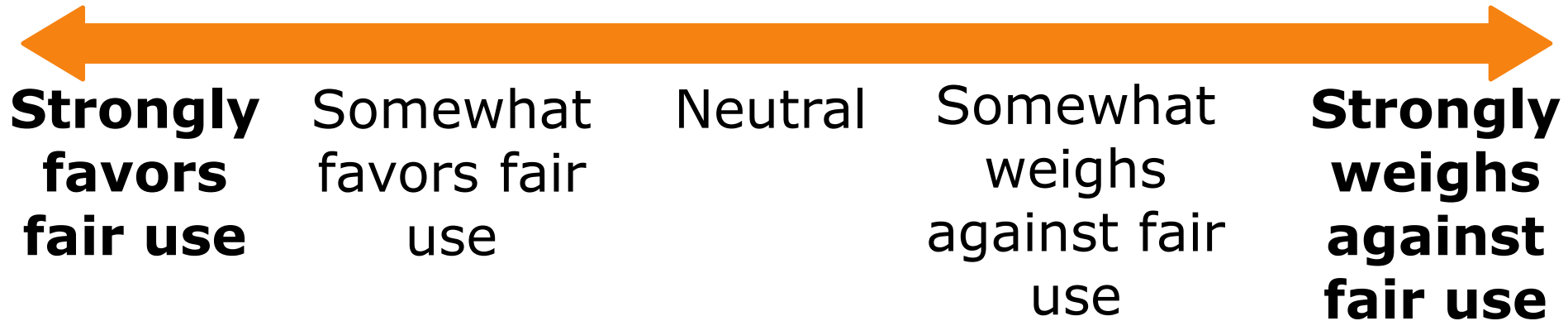
FACTOR 2: NATURE OF THE COPYRIGHTED WORK

Favors fair use

- ☐ Factual or non-fiction source
- ☐ Published source

Weights against fair use

- ☐ Creative, artistic, or fiction source
- ☐ Unpublished source



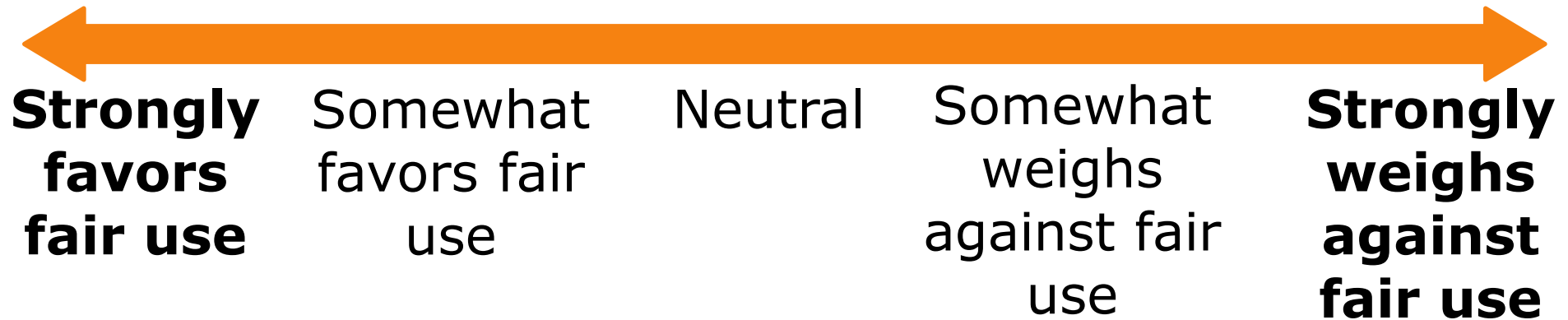
FACTOR 3: AMOUNT & SUBSTANTIALITY OF USE

Favors fair use

- ☐ Proportionally small excerpt or clip
- ☐ Portion used is peripheral to the entire work
- ☐ Only as much as absolutely necessary

Weights against fair use

- ☐ Entire work, or proportionally large excerpt
- ☐ Portion used is "heart of the work"



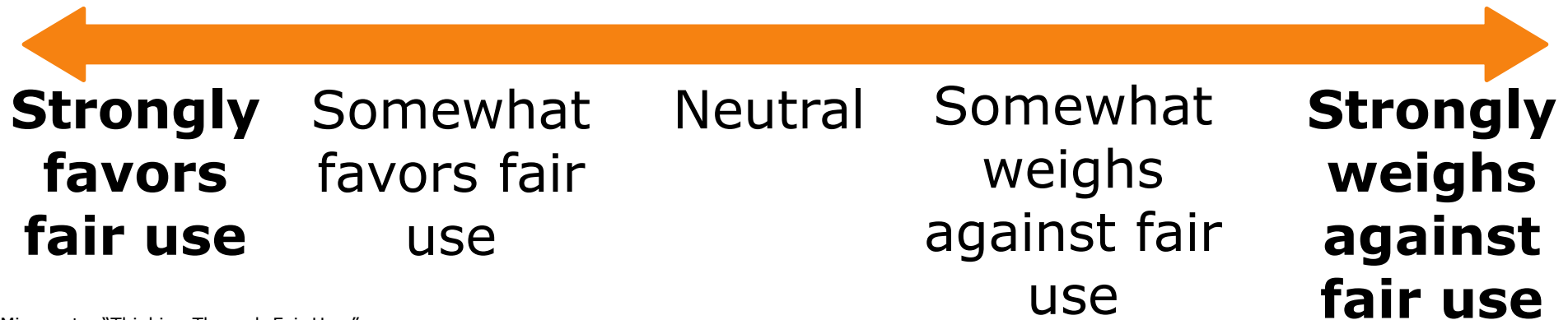
FACTOR 4: EFFECT ON MARKET OF WORK

Favors fair use

- ☐ Only one or few copies made
- ☐ One-time or limited use
- ☐ Use stimulates market for original work
- ☐ No impact on market for original work
- ☐ No way to pay or seek permission for your use

Weights against fair use

- ☐ Use directly substitutes sale of original work
- ☐ Many copies made
- ☐ Repeated or long-term use
- ☐ Impairs market for original work
- ☐ Easily obtained and affordable license or permission



FAIR USE ANALYSIS



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COPYRIGHT ANALYSIS

(Don't start with fair use)

1. Is it protected by copyright in the first place?
- 2 How do I want to use it? (Which owner's right is implicated in the first place?)
3. Are permissions already given?
4. Does a statutory exception apply?
5. How likely is it to constitute fair use?



TAKE HOME POINTS

- Fair use is necessary to achieve the constitutional goal of copyright law
- Fair use analysis requires critical thinking; no “one size fits all” answer
- Be proactive



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COURSE RESERVES

- 1976 Guidelines for Classroom Copying
 - Written by a House committee, intended as a “safe harbor”
 - 1 chapter if 10 chapters or less
 - 10% of the work if 10 chapters or more
 - No “consumables” (worksheets, exams)
- Cambridge University Press v. Georgia State University
 - GSU is prevailing party
 - Large majority of cases were found to be fair use



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COURSE RESERVES

- 1976 Guidelines are a starting point, but there is no “bright-line” rule
- If a license is not available, it reduces the risk of infringement
- If a license is available, it depends on the first 3 fair use factors



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COURSE RESERVES GOOD PRACTICES

- Direct students to a permanent URL if available
- Store copyrighted materials only if it is integral to the curriculum.
- Use a limited portion and only what is necessary for teaching purposes. Use legal copies only. Display copyright notice.
- Limit access to students enrolled in the course & others involved (e.g. GTAs). Disable student access after the semester.
- If material was produced primarily for digital instruction, be careful
- If the amount/nature of your use balances against fair use, consider if a license can be purchased



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SECTION 3: AUTHOR RIGHTS



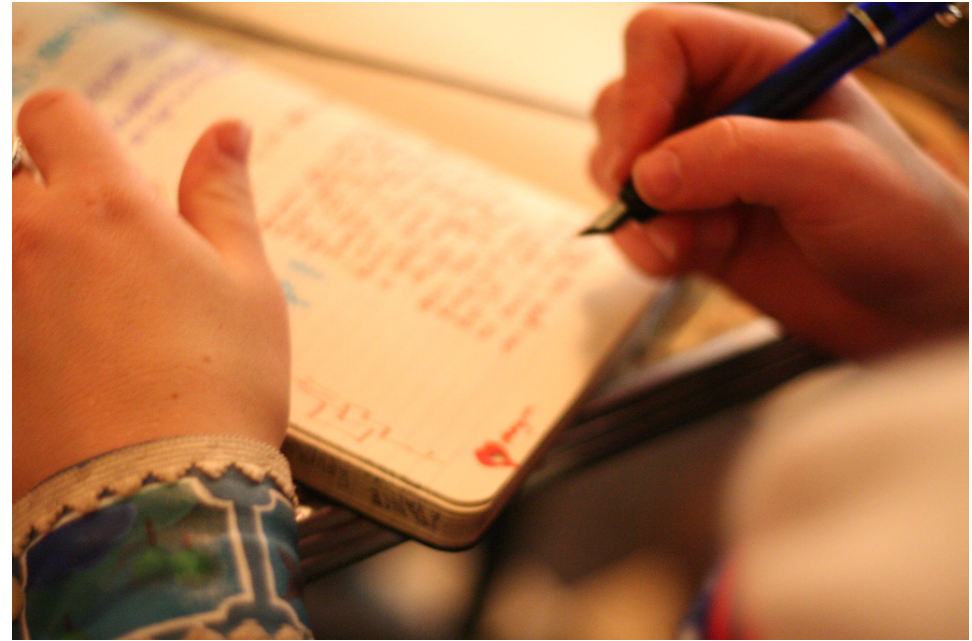
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WHO IS THE COPYRIGHT HOLDER?

Authors are usually the copyright holders to their work

Until/unless they

- **Transfer rights** to someone else, like a publisher
- Are employed under a work-for-hire policy



JOINT AUTHORSHIP

In academia, there is often an emphasis on the **first author**

However from a copyright standpoint, as long as a contributor added some element of written work, that contributor is an equal © holder.

WORKS FOR HIRE

Work prepared by employee within scope of his or her employment

Traditionally there is an exception for faculty in academia

But this is changing in the digital world as universities seek to own curriculum, syllabi, and course content

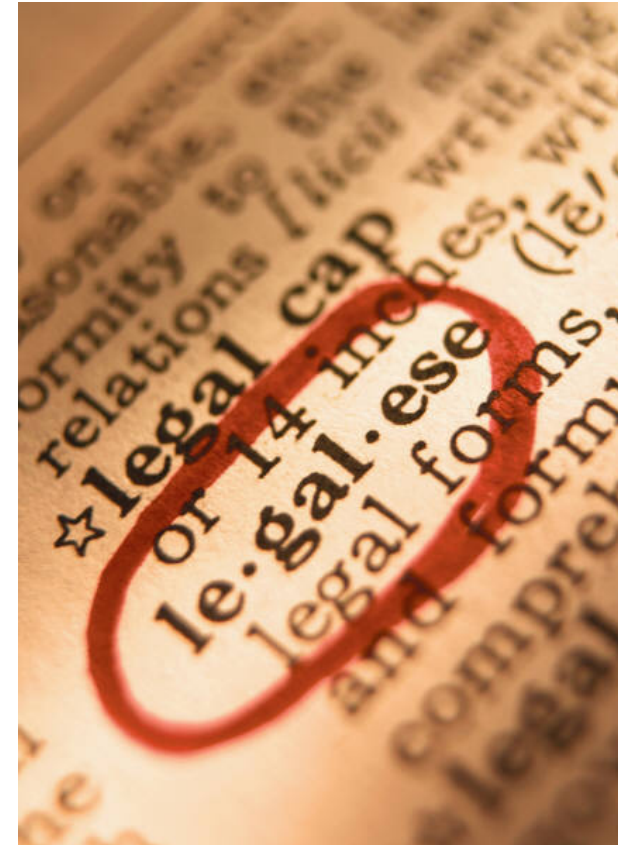
It is also changing in the different landscape of higher education, as universities seek to commercialize and license patents



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LICENSES AND COPYRIGHT

- Licenses are contracts that allow others to exercise some right that the licensor owns
- May carry conditions and limitations





Creative Commons Licenses

Some Rights Reserved

These licenses allow for a more flexible management of the exclusive rights offered by copyright protection, giving the creators the ability to choose the kinds of protections and freedoms that will govern the use of their work

Allow others to use your work while still protecting your intellectual property



Combine these terms
to create CC licenses



BY

Attribution

Others can copy, distribute, display, perform and remix your work if they credit your name as requested by you



ND

No Derivative Works

Others can only copy, distribute, display or perform verbatim copies of your work



SA

Share Alike

Others can distribute your work only under a license identical to the one you have chosen for your work



NC

Non-Commercial

Others can copy, distribute, display, perform or remix your work but for non-commercial purposes only

Most restrictive
license

Most accommodating
license



LICENSES AND COPYRIGHT

the University may require that the Creator(s) grant an irrevocable, non-exclusive, royalty-free, worldwide right to reproduce in any media and distribute to the public, on a non-commercial basis, copies of said theses and dissertations, unless to do so would impair the ability of the Creator(s) to commercially or professionally exploit the Work

- OSU Intellectual Property Policy (1-0202)

OPEN ACCESS POLICIES AT UNIVERSITIES

The faculty at universities such as Harvard, MIT and the University of California System have unanimously voted to provide the university with **non-exclusive rights** to archive and distribute their scholarly articles



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GREEN OPEN ACCESS

Publish your article in a non-OA journal but also **retain your right** to “self-archive” it in an OA archive



PUBLICATION STAGES

Publication Stage	Definition	Terms used
Pre-Print	The version of the manuscript submitted to the journal, <u>before</u> undergoing peer review	Submitted manuscript, Author's original draft, Pre-refereed print
Post-Print	The accepted version, <u>after</u> peer review but <u>prior</u> the final copy-editing and layout	Accepted manuscript, accepted author manuscript, Post-refereed print
Published article	An exact digital replicate of the published article	Version of record, Publisher's version, Published journal article

Adapted from Björk, B.-C., Laakso, M., Welling, P. and Paetau, P. "[Anatomy of green open access](#)." *Journal of the Association for Information Science and Technology* 65 (2014): 237–250.



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GREEN OPEN ACCESS HINGES ON RIGHTS RETENTION

Most publishers now give authors the right to make
the **accepted version available open access**

Sometimes it is written into the contract, sometimes
you must ask



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GREEN OPEN ACCESS

Bundled vs. Unbundled Copyright

RIGHTS PUBLISHERS WANT

- Reproduction
- Distribution
- Derivatives
- Pretty much all of them

RIGHTS PUBLISHERS NEED

- Right of First Publication
... that's really all
- Other issues can be managed with licenses

PERMISSION TO UPLOAD ACCEPTED VERSION

The top 100 journal publishers (by output volume)...

...would in **62% of cases** allow immediate upload of **accepted version** manuscripts in institutional/subject repositories...

...and a whole **79% within a year** of publication!

GREEN OPEN ACCESS

Why the lack of uptake? Researchers...

- are unaware of their right to self-archive
- are unsure whether they have a legal right to self-archive
- fear it might put the acceptance for publication at risk
- believe that it might be a lot of work

Does a journal permit self-archiving?

Three ways to check:

1. Review your contract.

Rights retention varies:

- a) Publisher takes all rights and licenses
none back

☐ Copyright Transfer/Publishing Agreement. In consideration of the action of the American Medical Association (AMA) in reviewing and editing this submission (manuscript, tables, figures, video, audio, and other supplemental files for publication), I hereby transfer, assign, or otherwise convey all copyright ownership, including any and all rights incidental thereto, exclusively to the AMA, in the event that such work is published by the AMA.

Does a journal permit self-archiving?

Three ways to check:

1. Review your contract.

Rights retention varies:

- b) Publisher takes some rights and licenses some back

C. PERMITTED USES BY CONTRIBUTOR

1. Submitted Version. Wiley-Blackwell licenses back the following rights to the Contributor in the version of the Contribution as originally submitted for publication:

- a. After publication of the final article, the right to self-archive on the Contributor's personal website or in the Contributor's institution's/employer's institutional repository or archive. This right extends to both intranets and the Internet. The Contributor may not update the submission version or replace it with the published Contribution. The version posted must contain a legend as follows: This is the pre-peer reviewed version of the following article: FULL CITE, which has been published in final form at [Link to final article].
- b. The right to transmit, print and share copies with colleagues.

Does a journal permit self-archiving?

Three ways to check:

1. Review your contract.

Rights retention varies:

Author retains rights and licenses some to the publisher (e.g. first publication)

First publication rights to original work accepted for publication is granted to *Journal of Librarianship and Scholarly Communication* but **copyright for all work published in the journal is retained by the author(s).**

Authors are permitted to post their work online in institutional/disciplinary repositories or on their own websites. Pre-print versions posted online should include a citation and link to the final published version in *Journal of Librarianship and Scholarly Communication* as soon as the issue is available; post-print versions (including the final publisher's PDF) should include a citation and link to the journal's website.

Does a journal permit self-archiving?

Three ways to check:

2. Check SHERPA-RoMEO

www.sherpa.ac.uk/romeo/



Journal:	Journal of Librarianship and Information Science [1] (ISSN: 0961-0006, ESSN: 1741-6477)
RoMEO:	This is a <u>RoMEO green</u> journal
Paid OA:	A paid open access option is available for this journal.
Author's Pre-print:	✓ author can archive pre-print (ie pre-refereeing)
Author's Post-print:	✓ author can archive post-print (ie final draft post-refereeing)
Publisher's Version/PDF:	✗ author cannot archive publisher's version/PDF
General Conditions:	<ul style="list-style-type: none">• Authors retain copyright• Pre-print on any website• Author's post-print on author's personal website, departmental website, institutional website or institutional repository• On other repositories including PubMed Central after 12 months embargo• Publisher copyright and source must be acknowledged• Publisher's version/PDF cannot be used• Post-print version with changes from referees comments can be used• "as published" final version with layout and copy-editing changes cannot be archived but can be used on secure• Must link to publisher version with DOI

Does a journal permit self-archiving?

Three ways to check:

3. Consult with a librarian


<https://info.library.okstate.edu/clarke-iakovakis>

Menu

[Profile](#)

[Clarke's Guides](#)

Librarian



[Clarke Iakovakis](#)

[Library](#) / [Guides](#) / [Librarians](#) / [Clarke Iakovakis](#) / Profile

Clarke Iakovakis: Profile

Professional Service & Memberships

- TxETDA Board Member (2018-)
- Texas Conference on Digital Libraries planning committee (2017-)
- American Library Association
- Texas Library Association
- Association of College & Research Libraries

Selected Publications & Presentations

Selected Presentations

Centralizing ETD Processing in the Library: Owning the Roles of ETD Administration, Research Librarianship, and Scholarly Communications." US Electronic Theses & Dissertation Association Annual Conference. October 2018. [Session Description](#). [Session Materials](#).

Introduction to R for Libraries." Three-part webinar. Sponsored by the Association for Library Collections & Technical Services (ALCTS). May 2018. [Session Description](#).

Database Usage in Context: Wrangling Vendor, Library, and Institutional Data." Webinar at the Amigos Library Services Online Conference Wrangling Library Data: Analytics, Dashboards, and Spreadsheets. February 2018. [Session Description](#). [Session Materials](#).

Personalizing Assessment: Making Collections Data Work for You." Panel presentation at the American Library Association Annual Conference. Chicago, IL. June 2017. [Session Description](#). [Session Materials](#).

Revitalizing the Curriculum Library: Analyzing the Collection, Surveying Faculty, and Forming a College of Education Advisory Group." Lightning talk co-presented at the Education and Behavioral Sciences Section (EBSS) Research Forum at the ALA

GREEN OPEN ACCESS

Takeaways

It's negotiable: before publishing, consider what rights you want to keep

If you have the right to self-archive, **exercise that right**

How???

DEPOSIT YOUR SCHOLARSHIP IN SHAREOK

- SHAREOK is the institutional repository of Oklahoma State University
- Maintained by the Edmon Low Library
- Library
 - checks for copyright compliance
 - archives the item & attaches permanent URL
 - adds metadata
 - ensures it is crawled by Google Scholar and library catalogs around the world



Library

<https://shareok.org/>

SHAREOK

advancing Oklahoma scholarship, research and institutional memory

[SHAREOK Home](#) / [Oklahoma State University](#) / [OSU - Faculty Papers](#)



- ☒ This Community
- ☐ Search SHAREOK

BROWSE

This Community

By Issue Date

Authors

Titles

Subjects

By Series

All of SHAREOK

Communities & Collections

By Issue Date

OSU - Faculty Papers



Sub-communities within this community

[OSU - Regents Professors](#) [0]

Collections in this community

[OSU - Faculty and Staff Publications](#) [378]

[OSU - Research Data](#) [2]

[Recent Submissions](#)

WHY POST PREPRINTS?

- Allow your research to be read more quickly
 - Many citation aggregators will identify it later on
 - You can add a disclaimer, e.g.
 - “first draft: contact me for permission to cite”
- Growing body of research indicating correlation between citation count and open access
- Most publishers do not classify preprints as “prior publication” (but check policies)
 - Some publishers *encourage* posting preprints
- Pre-registration (<https://osf.io/prereg/>)
 - writing out specific details such as data collection methods, analysis plans, and rules for data exclusion
 - make important decisions early on and have a clear record of these choices



Library

TAKE HOME POINTS

1. We all own copyright automatically until we sign it away.
2. Try not to give away more than you need to. **It's negotiable:** before publishing, think ahead of how you want to use the work, and consider what rights you want to keep
3. If you have the right to self-archive, **exercise that right**
4. Contact me for help parsing your contract for whether you have the right



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REFERENCES

Association of College & Research Libraries. [ACRL Scholarly Communications Roadshow, Baylor University](#) . Licensed under CC BY-NC-SA. Portions of this work created by Molly Keener for the 14th ACRL National Conference, Scholarly Communication 101 workshop, and last updated by Will Cross, in February 2014. Licensed under CC BY-NC-SA.

Björk, B.-C., Laakso, M., Welling, P. and Paetau, P. "[Anatomy of green open access](#)." *Journal of the Association for Information Science and Technology* 65 (2014): 237–250.

Harnad, S., Brody, T., Vallieres, F., Carr, L., Hitchcock, S., Gingras, Y., Oppenheim, C., et al. "[The access/impact problem and the green and gold roads to open access](#)." *Serials Review* 30, no. 4 (2004): 310–314.

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University of Texas. TEACH Act Checklist. <https://guides.lib.utexas.edu/copyright/teachactchecklist>. Licensed under CC BY-NC



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Cirasella, Jill. Open Access: [Which Side Are You On?](#) Licensed under CC BY. "Legalese" © Ian Varley, Used under CC-BY

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